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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GINA M. ALONGI, AS SHE IS ADMINISTRATOR,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 4 HEALTH AND WELFARE
PENSION, ANNUITY AND SAVINGS FUNDS,
LABOR-MANAGEMENT COOPERATION TRUST AND
HOISTING AND PORTABLE ENGINEERS LOCAL 4
APPRENTICE AND TRAINING FUND,

Plaintiff(s),

v.

Civil Action
No. 17-12419 RWZ

ACCURATE ENGINEERED CONCRETE, INC.
AND FRANK J. FRANZONE, INC.

Defendant(s).

DEPOSITION OF CYNTHIA C. ZANGARI, a witness
called by counsel for the Plaintiffs, taken pursuant
to the applicable rules, before Diane L. McElwee,
RMR, Certified Shorthand Reporter and Notary Public
in and for the Commonwealth of Massachusetts, at the
Offices of IUOE Local 4, 16 Trotter Drive, Medway,
Massachusetts, on Tuesday, November 13, 2018,
commencing at 10:08 AM.

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1 PRESENT:

2 INTERNATIONAL UNION OF OPERATING ENGINEERS
3 Local 4
4 Health and Welfare, Pension and Annuity Funds
5 16 Trotter Dr., P.O. Box 680
6 Medway, MA 02053
7 by Gregory A. Geiman, Esq.
8 ggeiman@local4funds.org
9 for the Plaintiffs

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BOCCINO LAW
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Beverly, MA 01915
by Amato J. Bocchino, Jr., Esq.
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for the Defendants

1 I N D E X
2

3 WITNESS: DIRECT CROSS REDIRECT RECROSS
4

5 CYNTHIA C. ZANGARI

6 by Mr. Geiman 5

10 E X H I B I T S

11 No.		12 Page
12 A	Payroll Registers, 9/3/17 to 13 9/9/17, two pages	17
14 B	Letter dated 12/14/2009 to Plan 15 Participants from Operating 16 Engineers Local 4, two pages, 17 front and back	23
18 C	Payroll Journal with YTD, 19 Check Date 9/6/2013, three pages	29
20 D	Accurate Engineered Concrete, 21 Hours Worked Through 22 December 2017, eight pages	33

1 P R O C E E D I N G S
2 .
3

4 MR. GEIMAN: Welcome, Cynthia. My
5 name is Greg Geiman. We met earlier. I am counsel
6 to the plaintiffs, in this matter the Operating
7 Engineers Local 4 Funds, and I appreciate your coming
in today.

8 Amato, we will agree to reserve
9 objections except as to form until trial?

10 MR. BOCCHINO: Yes.

11 MR. GEIMAN: And waive the
12 requirement that Cynthia need to sign and read the
13 deposition. She certainly may but just to waive the
14 requirement that she do so.

15 MR. BOCCHINO: She would like the
16 30 days to read it. I think what you are asking,
17 Greg, is you want to waive the requirement that she
18 has to sign in front of a notary.

19 MR. GEIMAN: Yes.

20 MR. BOCCHINO: Which I am fine with,
21 if that's your question.

22 MR. GEIMAN: I am sorry. Yes, it
23 is. Okay.

24 MR. BOCCHINO: Yes.

1 CYNTHIA C. ZANGARI, a witness identified and sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GEIMAN:

5 Q Cynthia, if you need a take a break at any
6 point, please let us know. We will go off the record
7 and let you go use the restroom, get a bottle of
8 water, whatever you need.

9 A Okay.

10 Q Okay. If you need me to repeat or restate a
11 question, please feel free, you know, to let me know,
12 and the only other reminder is that any response
13 needs to be verbal. No shaking yes or no, anything
14 like that.

15 A Yes.

16 Q Okay.

17 Cynthia, would you please state your
18 name for the record?

19 A Cynthia Zangari.

20 Q Okay. Cynthia, what is your home address?

21 A 270 Broadway, Haverhill, Massachusetts.

22 Q Okay. And you are currently, Cynthia, an
23 employee of Accurate Engineered Concrete?

24 A No. I am an employee of Frank J. Franzone,

1 Inc.

2 **Q** Okay. And what is your position currently
3 with Frank J. Franzone, Inc.?

4 **A** I oversee all day-to-day activities,
5 scheduling, proposals.

6 **Q** Do you have a job title per say, or are you
7 sort of just whatever comes along?

8 **A** No, no title.

9 **Q** Okay. And do you currently have any role
10 with Accurate Engineered Concrete?

11 **A** Well, the two companies were intertwined.
12 Yes, I did, but I was employed by Frank J. Franzone.
13 That's who my paycheck came from.

14 **Q** And I just want to clarify because you are
15 using past tense. You are still employed by Frank J.
16 Franzone?

17 **A** Yes.

18 **Q** At any point were you employed by Accurate
19 Engineered Concrete?

20 **A** I got a bonus check from there on a good
21 year.

22 **Q** And do you know or do you recall what the
23 purpose of the bonus check was, why you received it?

24 **A** Probably from the results of the job we

1 completed.

2 **Q** Okay. And if you recall, what is the
3 address for Frank J. Franzone's principal place of
4 business?

5 **A** 34 Newark Street, Haverhill, Massachusetts.

6 **Q** Okay. What type of work does Frank J.
7 Franzone, Inc., perform?

8 **A** We do concrete underlayment and lightweight
9 cellular concrete.

10 **Q** And how long have you been employed by
11 Frank J. Franzone?

12 **A** Since June 1, 2006.

13 **Q** Okay. Where were you before that?

14 **A** I was a real estate agent and basically took
15 care of my mother before she passed away.

16 **Q** Okay. Do you recall how you became employed
17 by Frank J. Franzone? Was it an advertisement or
18 word of mouth?

19 **A** It was a request by Mr. Franzone.

20 **Q** So did you know Mr. Franzone before becoming
21 employed?

22 **A** Yes. My sister was employed by him, and she
23 moved, and he asked if I would come on board, which
24 was for a temporary basis.

1 Q I see. Twelve years temporary?

2 A Exactly.

3 **Q** Okay. And your sister is no longer employed
4 by Mr. Franzone?

5 A Just if I needed coverage.

6 Q I see. Okay.

What's the geographic region generally in which Franzone performs its work? And I should clarify. When I say "Franzone" going forward, I will mean Frank J. Franzone, Inc.

11 A Basically Northeast.

Q Okay. So outside of Massachusetts?

13 A Maine, Vermont, New Hampshire, yes, East
14 Coast.

15 **Q** Okay. And are you familiar at all with
16 Accurate Engineered Concrete's work jurisdiction as
17 well? Do you know where their jobs are generally?

18 A Yes, New York, New Jersey, Massachusetts,
19 the same area.

20 **Q** Same area. Okay. And where is Accurate
21 Engineered Concrete's principal place of business?

22 A 36 Newark Street, Haverhill, Massachusetts.

23 | o So next door to each other?

24 A It's one building.

1 **Q** It's one building. Thank you. Do you know
2 who owns the building?

3 **A** Newark Street, LLC.

4 **Q** Are you aware if Frank J. Franzone, Inc.,
5 and Accurate Engineered Concrete have a lease to work
6 within that building? Is there any sort of --

7 **A** They pay rent.

8 **Q** They do pay rent.

9 If you know, Cynthia, who handles the
10 payroll and accounts payable for Accurate Engineered?

11 **A** I do.

12 (Deponent's phone sounded)

13 MR. GEIMAN: Off the record.

14 (Discussion off the record)

15 **Q** Okay. Cynthia, I apologize because this is
16 more for clarification purposes, and I think you have
17 answered this question already: You do not receive a
18 paycheck from Accurate Engineered Concrete?

19 **A** Not a regular paycheck.

20 **Q** Just an occasional bonus check?

21 **A** (Witness nodded) .

22 **Q** Okay. Thank you.

23 Have you been responsible for the
24 Accurate payables and accounts payable since June 1st

1 of 2006?

2 A Yes. It gets called in. Payroll gets
3 called into an outside company.

4 Q Okay.

5 Who oversees, Cynthia, the labor
6 expenses for each company to the extent that there
7 are any? And by "labor expenses" I mean fringe
8 benefit contributions, prevailing wage, things like
9 that.

10 A I do.

11 Q Are you familiar, Cynthia, with what Local 4
12 refers to as remittance reports?

13 A Yes.

14 Q Okay. And do you fill those reports out on
15 a month-to-month basis?

16 A I fill the reports out.

17 Q Who provides you, Cynthia, with the hours to
18 put on those reports on a month-to-month basis?

19 A Based on the payroll for what the workers
20 work.

21 Q So if somebody -- if a Local 4 operator
22 worked, let's say, eight hours in a given month for
23 Accurate Engineered Concrete, you are just pulling
24 that from the payroll and paying the fringe benefit

1 contribution on that basis?

2 A Right.

3 Q Okay.

4 Are you familiar, Cynthia, with union
5 rate sheets?

6 A Yes.

7 Q Okay. And are you generally the recipient
8 of those union rate sheets?

9 A Yes.

10 Q Cynthia, who sets employee work schedules
11 for Franzone?

12 A Work schedules are based on work activity,
13 and that basically would be -- I would be told how
14 many people need to be on a job by Frank's proposals.

15 Q Does Frank do the bidding for Franzone?

16 A Yes, he does.

17 Q Does Frank do the bidding for Accurate?

18 A Yes, he does.

19 Q Okay.

20 If Franzone or Accurate wins a job, you
21 then assign operating engineers to that job based on
22 the bid; is that correct?

23 A Yes.

24 Q Okay. Are you familiar with the process of

1 how bids are made? Do you have any hand in that
2 process?

3 A Simple. A plan would come in. Frank would
4 do a take-off. He would then get the square footage
5 type of thing, depending on the type of job it was.
6 He would prepare a bid. Numbers would be checked.
7 A proposal is sent.

8 Basically that's how a bid becomes -- I
9 mean a request for a bid becomes a proposal.

10 **Q** Okay. And are you familiar, Cynthia, as to
11 the process of how Frank decides or you decide or you
12 decide in conjunction whether a bid is for Accurate
13 or for Franzone?

14 A Basically it is asked, Is this a union or a
15 shop job.

16 **Q** Asked of whom?

17 A Of whoever is requesting the bid.

18 **Q** Okay.

19 A There are companies that do come in that are
20 both union and open shop. They will say, This is a
21 union job.

22 **Q** Okay. Do you know the basis on which they
23 tell you that it's a union job?

24 A Usually it's right on their bid. The sheets

1 we get now are from all different companies, you
2 know, contracting companies. They smart bid. There
3 is so many of them right now. Smart bid is one. I
4 can't even think of them right offhand.

5 **Q** Okay.

6 A But usually that will state on it what the
7 requirements are.

8 **Q** Right. Okay.

9 Do you recall if Accurate and Franzone
10 have ever worked on the same job?

11 A No.

12 **Q** No. So to your recollection anyway,
13 Accurate has never worked as a subcontractor for
14 Franzone or vice versa?

15 A Never, never, separate entities.

16 **Q** Okay.

17 So let's go back to the Franzone office
18 for a second. Is there anybody on a day-to-day basis
19 there besides yourself and Frank? Are there any
20 other employees?

21 A On occasion, like, my sister would come in
22 to help me, because she is retired.

23 **Q** Okay. But nobody else?

24 A No.

1 **Q** And what about Accurate? Is that true of
2 Accurate as well generally, just you and Frank and
3 then your sister occasionally?

4 **A** Not for Accurate.

5 **Q** So your sister comes in to help just for
6 Franzone?

7 **A** Yes, just to help in the office. It is one
8 office.

9 **Q** Right, right.

10 What is the purpose of the two
11 different offices within the same building?

12 **A** They are not two separate offices. We are
13 one building, and it's open. The only difference is
14 the work is one company, and the other work is the
15 other company. That's it. It's one office.

16 **Q** So even though one has an address of 34 and
17 the other is 36, everything is really run out of the
18 same --

19 **A** Yes, it is.

20 **Q** Okay.

21 Just to ask again about the bid
22 process, have you ever had a circumstance in which a
23 job has been bid and the contractor doesn't have an
24 answer as to whether it should be a union or a

1 nonunion --

2 A No.

3 Q They always have a preference or an answer
4 to that question?

5 A Yes.

6 Q Okay. Do you or Frank ever independently
7 research whether a job would be considered in your
8 estimation a union job or not?

9 A No.

10 Q You just take it on face value basically?

11 A On what I am told.

12 Q Okay.

13 Let's talk a bit about work forces,
14 because it sounds like you do have some
15 responsibility for assigning workers to the jobs
16 again based on the terms of the bid and what the bid
17 says. How many operating engineers does Franzone
18 employ currently, do you know?

19 A Currently we have one.

20 Q And what is that person's name?

21 A Brian Davis.

22 Q Okay. And how about Accurate? How many
23 operating engineers does Accurate currently employ?

24 A Brian Davis.

1 **Q** Okay.

2 Going back -- I will go back to 2006.

3 Tell me if you are not able to recall. You know,
4 certainly don't give me a definitive answer if you
5 don't know with certainty. Is Brian Davis the only
6 operating engineer that Franzone or Accurate has
7 employed?

8 **A** No.

9 **Q** Do you recall any others?

10 **A** Shaun Ryan.

11 **Q** Did both Franzone and Accurate employ Shaun
12 Ryan at different times?

13 **A** Yes.

14 **Q** Are there any other operating engineers you
15 recall?

16 **A** No.

17 **Q** You said currently it's just Brian Davis.
18 Do you recall when Shaun Ryan stopped working for
19 either company?

20 **A** He is on worker's comp. So currently, no,
21 he is not employed.

22 **Q** Do you recall generally when he last worked
23 for either company?

24 **A** The first week in May. I do not have a

1 definitive date.

2 **Q** Okay. May of 2018 to be clear?

3 **A** Yes.

4 **Q** How are Mr. Davis and Mr. Ryan -- and for
5 our present purposes we will just, you know, assume
6 Mr. Ryan is still an operating engineer that works
7 for Franzone and Accurate even though he is currently
8 on worker's comp. How would they be paid? Would
9 they be paid -- strike that. I am sorry.

10 On whose payroll would each of those
11 gentlemen be paid?

12 **A** Depending on what job they worked on would
13 depend on what payroll they were paid on.

14 **Q** Accurate job, Accurate paycheck?

15 **A** Engineered payroll, Engineered paycheck.

16 **Q** I am going to ask you to take a look at a
17 document here.

18 MR. GEIMAN: Please mark this as
19 Exhibit A.

20 (Exhibit A marked for identification)

21 MR. GEIMAN: If we can take a break
22 for one minute. I have additional copies in my
23 office.

24 (Short recess taken)

1 **Q** Okay. Cynthia, do you recognize this
2 document?

3 **A** It's a payroll register.

4 **Q** And the first page I had provided you
5 appears to be a payroll register for Frank J.
6 Franzone, Inc., for the first week in September; is
7 that right?

8 **A** Yes.

9 **Q** And on the second page would be a payroll
10 register for Accurate for that same week; is that
11 right?

12 **A** Yes.

13 **Q** We highlighted, just for efficiency's sake,
14 the entries for Brian Davis and Shaun Ryan, and it
15 would appear that they have hours on each payroll
16 during that week. Could you walk me through how this
17 would work and why they have these hours?

18 **A** Sure.

19 During that week they worked one job
20 that was a union job, Accurate. They were paid eight
21 hours on Accurate. The rest of the week they worked
22 24 hours for Engineered. There was a holiday, and
23 they had overtime.

24 MR. BOCCHINO: I am just going to

1 throw out that when Cynthia says "Engineered" she
2 means Frank J. Franzone, Inc., Frank J. Franzone,
3 Inc., d/b/a Engineered -- whatever it is.

4 THE WITNESS: Yes. Sorry.

5 MR. GEIMAN: Right. I appreciate
6 the clarification.

7 A So they worked a total of it looks like
8 32 hours. There was a holiday. They worked
9 36 hours. The overtime hours was on a Frank J.
10 Franzone, Inc., job. That's how I was told to pay
11 them.

12 Q Okay. And who tells you how to make a
13 payment?

14 A Frank.

15 Q Okay. So the fringe benefit contributions
16 for that week would have been paid only on the
17 eight hours for Accurate?

18 A Yes.

19 Q Do you know, Cynthia, if Mr. Davis and
20 Mr. Ryan -- and I don't mean specifically this week
21 but just generally -- would receive payment for time
22 spent traveling to and from the job?

23 A They always got an eight-hour day when they
24 worked a union job. If they worked ten hours, they

1 got eight hours, two hours, but they were basically
2 driving in in Frank J. Franzone vehicles.

3 **Q** Okay. So even if they were going to an
4 Accurate job, they were in Frank Franzone --

5 **A** -- vehicles.

6 **Q** Were they responsible, Mr. Davis and
7 Mr. Ryan, for -- and you will have to pardon my
8 ignorance about the concrete business. Were they
9 responsible for cleaning the trucks in any way when
10 they were done with a job?

11 **A** Not necessarily, not to my knowledge.

12 **Q** Okay. Do you know if there were Department
13 of Transportation inspections, anything along those
14 lines, that they would have to be present for?

15 **A** Never had one.

16 **Q** Okay.

17 Did you ever receive a complaint from
18 Mr. Davis or Mr. Ryan regarding fringe benefit
19 contributions?

20 **A** Never.

21 (Pause)

22 **Q** Do you know, Cynthia, what the wage rate is
23 currently for an operating engineer working for
24 Franzone?

1 A Working for Franzone?

2 **Q** Yes.

3 A \$30 an hour.

4 **Q** Okay. Does Franzone provide any benefits to
5 its operating engineers?

6 A They had health insurance.

7 **Q** They did. Okay.

8 Do you know if both Mr. Davis and
9 Mr. Ryan had health insurance through Franzone dating
10 back to your start with the company?

11 A When I started with the company, I just
12 followed suit of what predecessors had done or had
13 been done. They were both being paid by Accurate
14 Engineered for 40 hours a week, and they didn't
15 always have insurance, but they did when I started.

16 **Q** Through the union?

17 A Yes.

18 **Q** Okay. And then -- and we will get to this
19 in a little bit. The operating engineers, Mr. Davis
20 and Mr. Ryan, lost their health insurance through the
21 union at some point around 2009. Is it your
22 understanding or do you know whether Accurate or
23 Franzone has paid for health insurance for those
24 gentlemen since 2009?

1 A Off and on, yes.

2 **Q** Do you know -- you say "off and on."

3 A Brian Davis right through. Shaun Ryan comes
4 and goes.

5 **Q** And what is that based on, do you know?

6 A Either he got laid off or chose to go work
7 somewhere else and comes back.

8 **Q** I see.

9 Do you know where Mr. Ryan has worked
10 other than for Accurate or Franzone in the last
11 ten years?

12 A No, I don't.

13 **Q** You don't. Okay.

14 Are you aware if Mr. Davis and Mr. Ryan
15 have ever worked for Accurate and Franzone on the
16 same day? Is it possible they could go to an
17 Accurate job and then to a Franzone job?

18 A No.

19 **Q** So everything is by the day essentially?

20 A Yes.

21 **Q** Let me talk with you about Brian Davis for a
22 minute. Does Brian Davis have a managerial function
23 with either Accurate or Franzone?

24 A Both he and Shaun were foremen at different

1 times.

2 **Q** Okay. Do you know whether Brian Davis is an
3 officer of either company?

4 A Not to my knowledge.

Q And Brian Davis performs work on heavy machinery to your knowledge? That's what he does when he goes out to these jobs?

8 A Yes.

9 **Q** Does he have any other function with the
10 company, anything that he might work with Frank on
11 with regards to bidding or with purchase of
12 equipment, anything other than just working on heavy
13 equipment?

14 A CDL license. He is a CDL driver. Excuse
15 me. He may offer input to Frank on heavy equipment.
16 I am not involved in that discussion with them
17 though, so I don't know what they discuss.

18 **Q** Okay. But you don't know whether they
19 discuss the allocation of resources, who should work
20 on what job, that sort of thing?

21 | A T don't know.

22 MR. GEIMAN: Okay. This will be
23 Exhibit B.

24 (Exhibit B marked for identification)

1 **Q** You can take a look at that. Let me know
2 when you are ready.

3 (Pause)

4 **Q** Have you ever seen this letter before,
5 Cynthia?

6 **A** No.

7 **Q** Are you generally familiar with what an
8 owner operator is in the trades?

9 **A** No.

10 **Q** Have you ever heard Mr. Davis referred to as
11 an owner operator?

12 **A** No. Mr. Davis an owner?

13 **Q** Brian Davis.

14 **A** No.

15 **Q** Okay. Thank you.

16 Let's talk about Shaun Ryan. When he
17 is not on worker's comp, has Shaun Ryan to your
18 knowledge generally worked on heavy machinery for
19 Accurate and Frank Franzone?

20 **A** Pump operator.

21 **Q** Okay. To your knowledge does Mr. Ryan have
22 any managerial function with either company?

23 **A** As I said previously, the foreman status
24 goes back and forth, went back and forth.

1 **Q** Okay.

2 Was there ever a time where you may
3 have discussed with Frank splitting Mr. Davis and
4 Mr. Ryan, having one as an operator for Accurate, one
5 as an operator for Franzone?

6 **A** Never.

7 **Q** Okay. Ever a discussion about hiring
8 so-called nonunion operators?

9 **A** Never.

10 **Q** Do you know whether Accurate does work,
11 Cynthia, for contractors that have a contract with
12 Local 4, any general contractors that are also signed
13 with Local 4?

14 **A** I am not understanding what you are asking
15 me.

16 **Q** Let me rephrase it.

17 When Accurate bids on a job --

18 **A** Yes.

19 **Q** -- is Accurate generally aware or not
20 whether the general contractor on the job is also a
21 Local 4 company?

22 **A** I have never known that.

23 **Q** It's not something you would look into?

24 **A** No, or ask.

1 **Q** And the same would be true of Franzone
2 I suppose? You wouldn't know whether the general
3 contractor is a union signatory or not?

4 **A** No.

5 **Q** Okay.

6 You said earlier, Cynthia, that
7 Mr. Davis and Mr. Ryan drive Franzone trucks.

8 **A** Yes.

9 **Q** Okay. And by that I suppose you mean that
10 the trucks are owned and in the name of Frank J.
11 Franzone, Inc.?

12 **A** Yes.

13 **Q** Okay. What about equipment, you know, the
14 concrete pumps, other equipment that might be used on
15 the job? Do you know who owns that equipment?

16 **A** It varied. Either company could own
17 depending on the type of work.

18 **Q** Okay. Accurate does own some equipment to
19 your knowledge?

20 **A** Yes, very little.

21 **Q** Very little.

22 How about vehicles? Does Accurate own
23 any vehicles?

24 **A** Yes.

1 **Q** Okay. Who would use the vehicles that
2 Accurate owns?

3 **A** The mixer would be used for lightweight
4 cellular concrete. The pickup truck would be used
5 for job purposes, and Frank has a vehicle he drives.

6 There is other equipment, but it's not
7 a vehicles.

8 **Q** Right, right.

9 Are there times that you are aware
10 where Accurate would use Franzone equipment or
11 vehicles or vice versa outside? I know you mentioned
12 Mr. Ryan and Mr. Davis use Franzone vehicles even if
13 they are going to an Accurate job. Are there other
14 instances where Accurate-owned equipment would be
15 used on a Franzone job or vice versa?

16 **A** Probably just pickup trucks, their vehicles,
17 pickup trucks.

18 **Q** Okay. But if Accurate was going to a job,
19 it would use equipment owned by Accurate exclusively?

20 **A** No, that's not what you asked me. You asked
21 me if Frank Franzone -- if Accurate vehicles were
22 used on Frank Franzone jobs.

23 **Q** Correct.

24 **A** And I am saying no, because it's a different

1 type of equipment.

2 Q Okay. Let me ask it a different way. Are
3 there -- strike that.

4 If Franzone has need of equipment on a
5 job, will it use Franzone equipment only, or could it
6 potentially use Accurate-owned equipment?

7 A If the need arises, arose, interchangeable,
8 yes.

9 Q There is a pool of equipment, and whatever
10 is needed is put out on the job?

11 A Yes.

12 Q Okay. Do you know if there is any
13 documentary arrangement, a subcontract, a lease, some
14 document where Accurate would use Franzone's
15 equipment or vice versa?

16 A No.

17 Q And so there is no payment rendered from one
18 company to the other for using that company's
19 equipment?

20 A No.

21 (Pause)

22 MR. GEIMAN: Bear with me for one
23 second. I apologize.

24 (Pause)

1 MR. GEIMAN: Make this Exhibit C,
2 please.

3 (Exhibit C marked for identification)

4 **Q** I will give you a second to look at that.

5 (Pause)

6 **Q** Are you familiar with these documents,
7 Cynthia?

8 A I am sure it's from Paychex. That was our
9 payroll company.

10 **Q** Okay. What I have given you is what appears
11 to be the Frank J. Franzone Payroll Journal, it says,
12 for the week of August 25th through August 31st of
13 2013. Then also the second page is the Payroll
14 Journal for Accurate Engineered Concrete for that
15 same period of time.

1 explain for me why he would receive a salary from
2 Frank J. Franzone, Inc.

3 A That was the agreement that Shaun Ryan and
4 Brian Davis made with Frank in 2009; that they would
5 get a salary every week less any union hours worked.
6 The economy had dropped. It was either that or be
7 laid off. They opted to do that.

8 Q Okay.

9 So to your knowledge before 2009
10 Mr. Davis did not receive a salary?

11 A Well, he received a salary from Accurate.

12 Q Mr. Davis did?

13 A Yes, and Mr. Ryan.

14 Q Both of them. Okay. Despite the fact that
15 they were performing work under the collective
16 bargaining agreement and receiving hourly wages, they
17 received a salary in addition to that?

18 A No addition, forty hours, whatever they
19 worked. Accurate would be subtracted. So if they
20 worked 16 hours on Accurate, they would get paid
21 24 from Engineered for the remainder of their time.
22 They always got their union rate. Never was that --
23 they always -- if they worked a union job, they got
24 their union rate.

1 **Q** Okay. So before 2009 did they do work for
2 Franzone as well?

3 **A** Probably, but they always got their -- they
4 got paid through the union, through Accurate.

5 **Q** So regardless of where the work was
6 performed, they were paid through --

7 **A** Yes. When the economy faulted, that's what
8 Frank did for them so they could keep a job.

9 **Q** Okay. And to your knowledge -- and again I
10 don't want you to speak on anything that you don't
11 know with certainty -- was there an arrangement made
12 with regard to the payment of fringe benefit
13 contributions at that time?

14 **A** Not to my knowledge.

15 **Q** Okay.

16 Cynthia, if you would look at the
17 third page of the document that we marked as
18 Exhibit C. It shows again the payroll for Accurate
19 Engineered. Mr. Ryan is receiving his hourly wage.
20 A similar arrangement was made for Mr. Ryan?

21 **A** He was not salaried. He was an hourly rate.

22 **Q** Okay. Was he salaried at any time for
23 either Accurate or Franzone?

24 **A** Accurate prior to 2009.

1 **Q** Going back to 2013 it appears that Mr. Davis
2 was paid a salary according to this first page anyway
3 of \$1200.

4 **A** Correct.

5 **Q** Per week. Do you know what his weekly
6 salary is currently?

7 **A** 1200 a week.

8 **Q** Do you know whether --

9 **A** I correct myself. Brian gets paid hourly
10 now, gets paid hourly. He has been. So any union
11 work he gets paid, and any Frank J. Franzone work
12 gets paid by the hour, no salary.

13 **Q** Okay. Do you know when that switched?

14 **A** I really don't.

15 **Q** Okay. Do you know why it switched?

16 **A** Probably for overtime, so he would get his
17 overtime rates.

18 **Q** Do you know what his hourly wage is from
19 Franzone currently?

20 **A** \$30 an hour.

21 **Q** And you would agree that \$30 an hour is less
22 than the Accurate union rate?

23 **A** It's half of it, yes.

24 **Q** Going back to benefits for a minute,

1 Cynthia, besides the health insurance, which I
2 understand was consistent for Mr. Davis and not
3 consistent for Mr. Ryan based on his work, were there
4 any other benefits provided to either Mr. Davis or
5 Mr. Ryan in the form of a defined benefit, defined
6 pension contribution, 401(K) ?

7 A No, no.

8 (Pause)

9 MR. GEIMAN: I enter this as
10 Exhibit D.

11 (Exhibit D marked for identification)

12 Q Take your time and look at that.

13 (Pause)

14 A Goes back 20 years.

15 Q You can let us know when you are ready.

16 Ready? Okay.

17 So, Cynthia, this is a document that
18 was put together by our auditor, Don Christy, who I
19 believe you met back in August when he came out.

20 A And Rosemary.

21 Q And Rosemary, yes. This is just a
22 recitation of the hours that have been remitted to
23 Accurate -- I am sorry -- by Accurate to Local 4 in
24 the almost 26 years since Accurate has been remitting

1 to Local 4.

2 . The reason I bring it to your
3 attention -- it touches on something you just
4 discussed briefly -- is that the hours for Mr. Davis
5 and Mr. Ryan did drop, as you can see here, fairly
6 precipitously in 2009. Can you speak a bit more
7 about why that decision was made that you discussed
8 to have Mr. Davis and Mr. Ryan --

9 A That was Mr. Franzone's decision because of
10 the economy. That's all I can say.

11 Q Okay.

12 A I just follow orders.

13 Q And 2009 certainly was not a good time
14 economically. We all remember that. I know that
15 work in the trades was slim. What is the work
16 outlook for Accurate and Franzone currently?

17 A Zero.

18 Q There is no work?

19 A Both men went on worker's comp, Brian the
20 end of April, and he is back to work, but Shaun is
21 still out.

22 Q But generally, putting aside Brian and Shaun
23 for a second, are Accurate and Franzone working quite
24 a bit?

1 A We have no crew.

2 Q No crew, no laborers?

3 A No.

Q Why is that?

5 A Just we didn't have an operator or a
6 finisher, so work was not getting done.

7 | Q Okay.

12 A No.

13 **Q** Okay. Do you know if either you or
14 Mr. Franzone had spoken to anybody at Local 4 about
15 obtaining another operator in the meantime?

16 A No. Our work is not union.

17 (Pause)

18 **Q** Are you aware of any other payments that
19 either Accurate or Franzone might be making to
20 Mr. Ryan or Mr. Davis?

21 A No.

22 | Q Other than what's on the payroll?

23 A No

24 Q You had mentioned a bonus payment from

1 Accurate at some point. Do you know if either
2 gentlemen has ever received a bonus check?

3 A They may have through the years.
4 Absolutely.

5 **Q** Would that be run through payroll?

6 A Yes.

7 **Q** It would be. Okay.

8 (Pause)

9 **Q** As we sit here currently, Cynthia, are
10 Accurate or Franzone working on any jobs?

11 A No -- yes. Accurate is working on a job for
12 S&F Concrete.

13 **Q** And is Mr. Davis on that job?

14 A He is on that job. One day every
15 three weeks, that's what it is.

16 **Q** Okay. Do you know if it's just a one-day
17 job for Mr. Davis? Is it expected that he just works
18 on that job today, or would you not know that?

19 A That's the only contract we have right now.

20 **Q** Okay. And they are generally one-day jobs
21 for Accurate?

22 A If that. Union job is sporadic, one day,
23 maybe one day a month, depending upon the type of
24 work. This one, S&F Concrete, is the old Necco

1 building, the G.E. building.

2 **Q** Yes.

3 **A** And we went one day last week and were
4 scheduled to go one day this week, and it's already
5 not going. So that's the consistency of the union
6 work, sporadic.

7 **Q** When you say "not going," what do you mean?

8 **A** They had scheduled a day to work this week,
9 but they are not ready to have our job, our
10 performance done. They are not ready.

11 **Q** Okay.

12 So if Mr. Davis worked one day a week
13 and Franzone didn't have any jobs in a given week,
14 how would Mr. Davis be paid for that week?

15 **A** He would get paid for the Accurate work and
16 whatever he would do for Frank.

17 **Q** But if there was no work for Franzone, Inc.,
18 he would just received his eight hours, assuming one
19 day for Accurate, and that's the extent of his pay?

20 **A** He actually works every day helping his
21 uncle, yes.

22 **Q** Who is Mr. Davis's uncle?

23 **A** Frank Franzone.

24 **Q** Oh, okay. And when you say he would do

1 other work helping his uncle --

2 A With the equipment, in the shop, cleaning up
3 the shop.

4 Q And which payroll would he be on for that
5 work for the shop?

6 A Frank Franzone.

7 Q For that work in the shop he would be on
8 Frank Franzone's payroll, and he could be working on
9 Accurate equipment, Franzone equipment? Again it
10 doesn't really matter.

11 A That's right.

12 Q Okay. What other types of work might
13 Mr. Davis do on an off day for Mr. Franzone?

14 A Basically just cleaning the shop, oiling the
15 equipment.

16 Q And for this work he would receive his \$30
17 an hour?

18 A Yes.

19 Q How about Mr. Ryan? Would he similarly
20 do -- when he was working, would he do work like that
21 as well?

22 A Yes.

23 Q And he, too, would be paid at \$30 an hour?

24 A Yes.

1 | (Pause)

2 **Q** You had mentioned S&F Concrete as a
3 contractor that Accurate works for. Does Accurate
4 generally work for concrete companies, concrete
5 contractors?

6 A It depends on the nature of the job. This
7 is the lightweight cellular concrete. Concrete
8 companies will call us if they need the product that
9 we distribute, which is a foam, a foam concentrate
10 that makes concrete lightweight.

11 | Q Okay.

15 A There were, yes.

16 **Q** When you say "were," was that because there
17 is not as much work now?

18 A Yes.

19 **Q** Now that Mr. Davis is back and off of
20 worker's comp, do you expect more consistent work for
21 Accurate?

22 A I don't know that.

23 **Q** You don't have any jobs in the pipeline so
24 to speak?

1 A Exactly.

2 Q Nothing coming up. But both companies,
3 Accurate and Franzone, are still bidding per usual.
4 Has anything changed with regard to business
5 practices?

6 A There is very little bidding. Frank is 87.

7 Q Okay.

8 Are you familiar, Cynthia, with
9 something that Local 4 refers to as a 40-hour
10 guarantee in its collective bargain agreement?

11 A No.

12 (Pause)

13 Q To your knowledge, Cynthia, both Mr. Davis
14 and Mr. Ryan have Local 4 books; they are members of
15 the Local 4 union?

16 A I don't know.

17 Q Okay.

18 When Mr. Franzone, as you described,
19 had spoken with Mr. Davis and Mr. Ryan back in 2008,
20 2009 and decided to alter the way in which they would
21 be paid, were you involved in that discussion?

22 A No. I was just told.

23 (Pause)

24 MR. GEIMAN: Okay. Thank you,

1 Cynthia. I don't think I have any further questions
2 at this time.

3 Do you have anything, Amato?

4 MR. BOCCHINO: No, I have no
5 questions.

6
7 (Off the record at 11:11 AM)

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1 C E R T I F I C A T E

2 I, CYNTHIA C. ZANGARI, do hereby
3 certify that I have read the foregoing transcript
4 of my testimony and further certify that to the
 best of my knowledge said transcript is true and
 accurate (with the exception of the following
 corrections listed below):

6 Page	7 Line	8 Correction and Reason for Change
9	10	-----
11	12	-----
13	14	-----
15	16	-----

Dated this _____ day of _____, 2018.
Signed under the pains and penalties of perjury.

17
18
19 _____
20 CYNTHIA C. ZANGARI
21

22 Sworn to and subscribed before me this _____
23 day of _____, 2018.

24
25 _____
26 Notary Public
27 My commission expires:

1 COMMONWEALTH OF MASSACHUSETTS)
2 NORFOLK, SS.)
3
4
5
6
7

I, DIANE L. McELWEE, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that there came before me on the 13th day of November, 2018, at 10:08 AM, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth touching and concerning the matters in controversy in this cause; that there was an examination under oath and the examination was reduced to transcript form under my direction and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and seal this _____ day of November, 2018.

DIANE L. McELWEE, Notary Public
My commission expires:
December 17, 2021